



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates

AGENCY: Office of Response and Restoration (OR&R), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of indirect cost rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2019

SUMMARY: Notice is hereby given to announce new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2019. The indirect cost rates for this fiscal year and date of implementation are provided in this notice. More information on these rates and the Damage Assessment, Remediation, and Restoration Program (“DARRP”) policy can be found at the DARRP web site at www.darrp.noaa.gov.

FOR FURTHER INFORMATION CONTACT: For further information contact: LaTonya Burgess at (240) 533-0428, LaTonya.Burgess@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) 42 U.S.C. 9601 *et seq.*, and the Oil Pollution Act of 1990 (“OPA”) 33 U.S.C. 2701 *et seq.*, and to support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (“NMSA”) 16 U.S.C. 1431 *et seq.* The DARRP consists of three component organizations: the Office of Response and Restoration (“ORR”) within the

National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel Natural Resources Section (“GCNRS”). The DARRP conducts Natural Resource Damage Assessments (“NRDAs”) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP’s Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (“R&M”) to: evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A federal register notice on R&M’s effort, their assessment of the DARRP’s cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for Fiscal Years (“FYs”) 1993 through 1999 was published on December 7, 2000 (65 Fed. Reg. 76611).

R&M continued its assessment of DARRP’s indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 Fed. Reg. 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (“Cotton”) to review and certify DARRP costs incurred on cases for

purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from ERT, Inc. ("ERT"), Freestone Environmental Services, Inc. ("Freestone"), and Genwest Systems, Inc. ("Genwest") were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ERT, Freestone, and Genwest provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. Subsequent federal notices have been published in the Federal Register as follows:

- FY 2002, published on October 6, 2003 (68 Fed. Reg. 57672)
- FY 2003, published on May 20, 2005 (70 Fed. Reg. 29280)
- FY 2004, published on March 16, 2006 (71 Fed. Reg. 13356)
- FY 2005, published on February 9, 2007 (72 Fed. Reg. 6221)
- FY 2006, published on June 3, 2008 (73 Fed. Reg. 31679)
- FY 2007 and FY 2008, published on November 16, 2009 (74 Fed. Reg. 58948)
- FY 2009 and FY 2010, published on October 20, 2011 (76 Fed. Reg. 65182)
- FY 2011, published on September 17, 2012 (77 Fed. Reg. 57074)
- FY 2012, published on August 29, 2013 (78 Fed. Reg. 53425)

- FY 2013, published on October 14, 2014 (79 Fed. Reg. 61617)
- FY 2014, published on December 17, 2015 (80 Fed. Reg. 78718)
- FY 2015, published on August 22, 2016 (81 Fed. Reg. 56580)

Empirical Concepts developed the DARRP indirect rates for FY 2016 and 2017. Empirical reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2016, 2017, and 2018 indirect cost rates. The federal notice for these rates can be found at the following:

- FY 2016 and FY 2017, published on October 16, 2019 (84 Fed. Reg. 55283)
- FY 2018, published on August 5, 2020 (85 Fed. Reg. 47358)

Empirical Concepts developed the DARRP indirect rates for FY 19 and reaffirmed the Direct Labor Cost Base as the most appropriate indirect allocation for the development of the FY 2019 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2019 as recommended by Empirical for each of the DARRP component organizations as provided in the following table:

DARRP Component Organization	FY 2019 Indirect Rate
Office of Response and Restoration (ORR)	142.15 percent
Restoration Center (RC)	76.99 percent
General Counsel Natural Resources Section (GCNRS)	65.95 percent

The FY 2019 rates will be applied to all damage assessment and

restoration case costs incurred between October 1, 2018 and September 30, 2019 effective October 1, 2021. DARRP will use the FY 2019 indirect cost rates for future fiscal years, beginning with FY 2020, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

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